

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:09-CR-217-D
No. 5:16-CV-319-D

ALLEN GREGORY TOLAR,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)
)

ORDER

On June 6, 2016, Allen Gregory Tolar ("Tolar") filed a motion under 28 U.S.C. § 2255 to vacate his sentence [D.E. 29]. On June 6, 2016, Tolar filed a second motion to vacate his sentence [D.E. 31]. On January 5, 2017, the government responded and agreed that Tolar's 235-month sentence should be vacated [D.E. 35].

Having reviewed the record and the governing law, the court GRANTS Tolar's motions [D.E. 29, 31] and VACATES his sentence. After the United States Probation Office prepares a new Presentence Investigation Report ("PSR"), the court will hold a new sentencing hearing and resentence Tolar. The court notifies the parties that it is considering an upward departure under U.S.S.G. § 4A1.3. See Fed. R. Crim. P. 32(h); U.S.S.G. § 4A1.3(a)(1).

SO ORDERED. This 17 day of March 2017.



JAMES C. DEVER III
Chief United States District Judge